THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Second Appeal No. 307 of 2001.
(Old S.A. No. 355 of 1993)

Cantonment Board, Lansdowne.

.. Defendant-appellant

Vs.

Anand Singh Bisht (since deceased) Contractor, substituted through his L.Rs.- 1/1 Smt. Shanti Devi (wife)
½ Roshan Bisht (son)
1/3 Kuldeep Bisht (son)
¼ Harendra Bisht (son)
All residents of Anand Bhawan, Lansdown, Pauri Garhwal

… Plaintiff-**Respondents.**

Sri P.C. Bisht, learned counsel for the appellant .
Sri Rajendra Dobhal, Learned Counsel for the respondent.

Date June 17, 2006

P.C.: Hon'ble B.S. Verma, J.

This second appeal is directed against the judgment and decree dated 20-12-1991 passed by the then District Judge, Pauri Garhwal, in Civil Appeal No. 6 of 1992 arising out of judgment and decree passed by the Civil Judge Pauri Garhwal dated 20-12-1991 passed in Original Suit No. 68 of 1988. By the impugned judgment and decree, the appeal preferred by the defendant-appellant was dismissed with costs.

Relevant facts giving rise to this appeal are that the original plaintiff-respondent Anand Singh filed a suit for recovery of Rs. 35,568.17 against the defendant Cantonment Board with the allegation that the plaintiff was given a contract to execute repair work and the work order was issued on 31.3.1986. According to the terms of contract, the plaintiff deposited security amount of Rs. 39,000/- which was done by tendering national Savings Certificates of Rs. 10,000/- and after deducting the amount of Rs. 32,625/- which the defendant did not pay towards running payment, thereby sum of Rs. 43,615/- was retained by the defendant towards security. Vide letter dated 3.1.1987, the defendant promised to pay the security amount after twelve calendar months, but it failed to pay the same in spite of notice dated 13.6.1988. It was stated that

The defendant did not pay the amount for the work done, fro which another suit was filed. Plaintiff accepted some deductions on account of go-down rent, etc. amounting to Rs. 7,046.83, therefore, the plaintiff claimed a sum of Rs. 35,668.17 p. from the defendant-appellant. The suit was resisted by filing written statement, wherein the allegations made in the plaint were denied and inter alia on the ground that the security was to be returned after execution of the contract work, but the plaintiff carried out only fifty per cent work and the rest of the work was got executed through another contractor to whom a payment of Rs. 45,356/- was made. The agreement between the parties was cancelled. According to defendant, sum of R. 17,107.37 P. as income tax, removal of defects and for rent of room was due against plaintiff and the said amount was to be deducted from security amount. A sum of Rs. 25,513.65 remained. On the other hand counter claim was preferred on the ground that the defendant was entitled to recover further amount from the plaintiff which was spent towards payment made to another agency after adjusting the same. The suit of the plaintiff was said to be premature.

The learned Civil Judge framed necessary issues, recorded evidence and after hearing the parties decreed the suit of the plaintiff in to –to. Aggrieved, the defendant went up in appeal before the District Judge, who after re-appraisal of the entire evidence did not find favour with the defendant-appellant and accordingly dismissed the appeal.

On 12-3-1993 the second appeal was admitted by the Allahabad High Court on the following substantial question of law:

1. Whether the suit was barred by Sec. 273(3) of the Cantonment Act, 1924?

2. Whether the suit was barred by Sec. 273(1) of the Cantonment Act, 1924?

3. Whether the Board has a right to forfeit security for non-completion of the work assigned under the Agreement?

4. Whether the Court ahs placed burden of poof wrongly on the defendant?

During the pendency of second appeal, the original plaintiff-respondent died and he was substituted by his legal heirs.

I have heard learned counsel for the rival parties and perused the entire material on record.

At the outset, learned counsel for the respondents has submitted that the present appeal is squarely covered by the judgment of this Court dated 25-10-2005 passed in Second Appeal No. 308 of 2001, Cantonment Baord Lansdowne Vs. Smt. Shanti Devi and others. It was urged that he controversy involved in the present appeal stands settled by the said judgment and the suit was between the same parties, which was filed by the plaintiff for recovery of Rs. 85,282.05. The learned counsel for the appellant fairly conceded to this fact.

I have perused the entire judgment dated 25-10-2005 passed in Second Appeal No. 308 of 2001. The facts giving rise to that appeal are almost similar. Having gone through the said judgment, I am in full agreement with the view taken by this Court. It is a fit cae in which this appeal may be dismissed on merit in terms of the judgment passed in Second Appeal No. 308 of 2001. Accordingly, the present appeal is liable to be dismissed.

The appeal is hereby dismissed in terms of the judgment of this Court in Second Appeal No. 308 of 2001, Cantonment Board Lansdowne Vs. Smt. Shanti Devi & others. No order as to costs.

(B.S. Verma, j.)

RCP